

ROBERT BENTLEY
GOVERNOR**JIM BYARD, JR.**
DIRECTOR**STATE OF ALABAMA**

December 7, 2011

In 2008, the United States Congress authorized Qualified Energy Conservation Bonds (QECBs) to finance a wide range of energy conservation facilities (described below) and allowed a maximum nationwide volume cap of \$800 million. In February of 2009, through the American Recovery and Reinvestment Act (ARRA), Congress increased the cap to \$3.2 billion, which was then to be allocated to each state based on population.

Eligible Project Types. QECBs are to be used to finance certain specified “qualified conservation purposes” as defined in 26 USC § 54D(f), IRS Notice 2009-29 and 26 U.S.C. § 54D(f); governments can finance such purposes through QECBs only if also permitted under Alabama law. A summary of those purposes is included on Exhibit A.

Financing Structure. QECBs are qualified tax credit bonds in which the holder of the bonds receives a tax credit rather than tax exempt interest. That tax credit is equal to 70% of the tax credit rate shown on the US Treasury’s qualified tax credit rate page (<https://www.treasurydirect.gov>) (the Tax Credit Rate) on the date the unit receives a binding commitment to purchase such bonds. Under the HIRE Act, adopted in 2010, issuers may elect to treat the QECB as a “specified tax credit bond”, which is a taxable bond (i.e., the bondholder receives taxable interest), and the issuer is entitled to a direct payment from the federal government on each interest payment date equal to the lesser of the amount of interest actually paid with respect to the bond and 70% of the Tax Credit Rate for such bond as of the date of sale to the purchaser. There is no time limit on the issuance of QECBs, but once a state’s allocation has been obligated, there is no further allocation under current law.

Allocation Process.

- The total allocation for the state of Alabama is \$48,364,000 in QECB issuing authority
- QECB provisions instruct the states to distribute separate allocations to each large city or county (greater than 100,000 in population as of July 1, 2007) based on a ratio of the jurisdiction’s population to the state population as a whole. IRS Notice 2009-29 mandated such allocations based on particular census numbers. These entities are considered “Large Local Governments” and each is listed in the chart attached as Exhibit B “Original Allocations to Large Local Governments.”
- The “balance of state” allocation will be obligated to eligible projects on an as-received basis. As bond cap availability in this category diminishes, projects received concurrently and competing for remaining authority will be evaluated for obligation on proposal merit and the availability of capacity or unused allocations.
- **After allocation to all Large Local Governments is complete, the state will directly allocate any remaining unused authority to eligible issuers for specific projects upon application receipt as noted above.**
- For each Large Local Government’s and the state’s allocation as a whole, at least 70% of QECB authority must be used for government projects and no more than 30% may be used for private activity projects.
- The Governor of Alabama, through Executive Order Number 27, has designated the Alabama Department of Economic and Community Affairs as the administrative entity for the QECB Program and the Energy Bond Allocation Committee (EBAC) as the entity through which reallocations of QECB allocation will be made.

Allocations and Reallocations.

Under ARRA provisions, Large Local Government localities receiving an original allocation may issue QECBs themselves or may designate another eligible unit of government to issue bonds from their original allocation, provided the project financed is fully within the jurisdiction of the originally awarded locality (and provided such designation is otherwise allowed under applicable federal laws, rules, regulations and requirements). For example, a county may choose to support a city's project by allowing the city to issue from the county's allocation, assuming the city's project falls completely within the county's jurisdiction. In these and similar situations, the originally awarded locality (e.g., the county in the above example) will be responsible for providing the EBAC with documentation of how they intend to use their original allocation or allow another issuer within their jurisdiction to use it.

If an originally-awarded locality is not able to or chooses not to use its original allocation or to offer it to another issuer within its jurisdiction, the authority may be reallocated to the state through the EBAC in the manner described in the section below ("Reallocation Procedure"). The EBAC may then reallocate such allocation to other eligible issuers.

A total of \$26,890,438 was originally allocated to 14 jurisdictions throughout Alabama. The EBAC will meet on an as-needed basis to allocate the remaining \$21,473,562 in state allocation and will continue to meet on a regular basis to award reallocations if and when any reallocated authority becomes available.

Reallocation Procedure.

As stated above, a large local government originally awarded QECB capacity is free to designate other eligible issuers within its jurisdiction to use all or a portion of its original allocation by whatever procedure is mutually acceptable to both parties, on condition that the originally awarded locality provides documentation of the designation to the EBAC and ensures that all other EBAC requests for documentation are met (and provided such designation is allowed under applicable federal laws, rules, regulations and requirements).

However, there may be reasons why the large local government would not be able to issue QECBs or to designate another issuer within the jurisdiction to issue from the original allocation. Some possible reasons include:

- Original allocation too small for a cost effective issuance
- Difficulty of finding a tax credit investor
- Insufficient debt capacity to issue bonds
- Lack of qualified projects within the jurisdiction

In such cases, original allocations may be reallocated to the state so that other issuers may benefit from the capacity. A locality that knows it will not be using its original allocation may affirmatively reallocate the allocation to the state by adopting a resolution of the governing body, marking the appropriate box on the *Notice of Intent* form attached as Exhibit C, having the form signed by the appropriate official, and returning the form along with a copy of the resolution to the EBAC.

In any event, whether the large local government chooses to use its capacity or to waive such capacity back to the state for reallocation to other entities, it must complete and return the form attached hereto as Exhibit C, “Notice of Intent to Issue Qualified Energy Conservation Bonds (QECBs) or to Reallocate Capacity to Issue QECBs”.

State Allocation and Reallocation Criteria.

In accordance with the direction and intent of the QECB legislation, the Recovery Act, and state law, rules, regulations and policies, the EBAC intends to use the criteria and procedures set forth in the attached Exhibit D (the “QECB Rules”) to evaluate all allocation requests (though not all criteria need to be demonstrated in a single project), as may be modified. However, all allocation decisions will be made by the EBAC in its sole discretion, in accordance with the rules and criteria set forth in Exhibit D, as may be modified. Applications for QECB capacity are attached hereto as Exhibit E (and electronic copies of this application will be available on the ADECA Energy Division’s website, www.adeca.alabama.gov/energy)

At the initial meeting of the EBAC, the QECB Rules will be adopted as official policies of the Committee as well as emergency and temporary rules.

All meetings of the EBAC will be posted on the Alabama Secretary of State’s website in accordance with the Open Meetings Act. Comments may be addressed by US Mail to:

Kathy Hornsby

ADECA Energy Division
Post Office Box 5690
Montgomery, AL 36103-5690

Or via email to: Kathy Hornsby at: kathy.hornsby@adeca.alabama.gov.

In any event, we are looking forward to working with eligible issuers to ensure that this program is a success in Alabama.

Eligible QECB Projects Under 26 USC 54E and Notice 2009-29

Qualified projects include:

A. Capital expenditures incurred for purposes of –

1. Reducing energy consumption in publicly-owned buildings by at least 20 percent,
2. Implementing green community programs,
3. Rural development involving the production of electricity from renewable energy resources, or
4. Any qualified facility (as determined under section 26 U.S.C. §45(d) without regard to paragraphs (8) and (10) thereof and without regard to any placed in service date) (which include wind facilities, closed-loop and open-loop biomass facilities, geothermal or solar energy facilities, small irrigation power facilities, landfill gas facilities, trash to energy facilities, hydropower facilities and marine and hydrokinetic renewable energy facilities)

B. Expenditures with respect to research facilities, and research grants, to support research in –

1. Development of cellulosic ethanol or other non-fossil fuels,
2. Technologies for the capture and sequestration of carbon dioxide produced through the use of fossil fuels,
3. Increasing the efficiency of existing technologies for producing non-fossil fuels,
4. Automobile battery technologies and other technologies to reduce fossil fuel consumption in transportation, or
5. Technologies to reduce energy use in buildings

C. Mass commuting facilities and related facilities that reduce the consumption of energy, including expenditures to reduce pollution from vehicles used for mass commuting.

D. Demonstration projects designed to promote the commercialization of –

1. Green building technology,
2. Conversion of agricultural waste for use in the production of fuel or otherwise,
3. Advanced battery manufacturing technologies,
4. Technologies to reduce peak use of electricity, or
5. Technologies for the capture and sequestration of carbon dioxide emitted from combusting fossil fuels in order to produce electricity.

E. Public education campaigns to promote energy efficiency.

In any event, for private activity bonds, expenditures other than capital expenditures do not count as a “qualified conservation purpose.”

Original Allocations to Large Local Governments

Qualified Energy Conservation Bond Allocations to Large Local Governments for 2009
Based on Population Estimates of July 1, 2007

Jurisdiction	Population	Percent	Allocation	Gov't Projects ≥70%	Private Activ. not>30%
State of Alabama	4,626,595	100%	\$ 48,364,000	\$ 33,854,800	\$ 14,509,200
Baldwin County	171,748	3.71%	1,795,364	1,256,755	\$ 538,609
Calhoun County	112,856	2.44%	1,179,737	825,816	\$ 353,921
Etowah County	103,080	2.23%	1,077,544	754,281	\$ 323,263
Jefferson County	429,040	9.27%	4,484,959	3,139,472	\$ 1,345,488
City of Birmingham	229,775	4.97%	2,401,947	1,681,363	\$ 720,584
Lee County	130,521	2.82%	1,364,398	955,079	\$ 409,319
Madison County	141,166	3.05%	1,475,875	1,032,973	\$ 442,703
City of Huntsville	171,280	3.70%	1,790,471	1,253,330	\$ 537,141
Mobile County	212,855	4.60%	2,225,075	1,557,552	\$ 667,522
City of Mobile	191,242	4.13%	1,999,144	1,399,401	\$ 599,743
City of Montgomery	203,860	4.41%	2,131,046	1,491,732	\$ 639,314
Morgan County	114,789	2.48%	1,199,944	839,961	\$ 359,983
Shelby County	182,969	3.95%	1,912,662	1,338,863	\$ 573,799
Tuscaloosa County	177,211	3.83%	1,852,471	1,296,730	\$ 555,741
Balance of State	2,054,203	44.40%	21,473,562	15,031,493	\$ 6,442,069

NOTICE OF INTENT TO ISSUE QUALIFIED ENERGY CONSERVATION BONDS ("QECB'S") OR TO REALLOCATE

CAPACITY TO ISSUE QECB'S

Attn: Energy Bond Allocation Committee
c/o Kathy Hornsby
Energy Division
Alabama Department of Economic & Community Affairs
334-242-5284
kathy.hornsby@adeca.alabama.gov

Hand/Overnight Delivery
401 Adams Avenue
Suite 560
Montgomery, Alabama 36104

US Mail
Post Office Box 5690
Montgomery, AL 36103-5690

DESCRIPTION OF ALLOCATION

1. Large Local Government: _____ ("Recipient")
2. Total amount of QECB Allocation received by the Recipient: \$ _____
3. Recipient hereby expresses its intent to **use** the following amounts of its allocation: \$ _____

If the Recipient intends to **use** Allocation, it must complete the "QUALIFIED ENERGY CONSERVATION BOND PROJECT DESCRIPTION" below for **each project** to be financed. NOTE: No more than thirty percent (30%) of Recipient's allocation can be used for QECBs that are considered private activity bonds under applicable laws, rules, regulations and requirements.

4. Recipient hereby elects to **waive/reallocate** the following amounts of its QECB allocation back to the State of Alabama: \$ _____. Recipient understands that upon waiver/reallocation of its QECB capacity back to the State, the Energy Bond Allocation Committee (the "EBAC") may itself provide such allocation to any other eligible issuer in any area of the State.

[Signature Page to Follow]

The undersigned, on behalf of the above described Recipient, hereby certifies that it is authorized by the Recipient to make this filing and the waivers and requests contained herein on behalf of the Recipient.

Date: _____

By: _____
Signature of Authorized Official

Name (please print): _____

Title: _____

Address: _____

Phone No.: _____

QUALIFIED ENERGY CONSERVATION BOND PROJECT DESCRIPTION FOR NOTICE OF INTENT TO USE ALLOCATION

[Use separate form for each project]

(1) General Information

- A. County or Large Municipality: _____
- B. Issuing Entity: _____
- C. Name of Project or Purpose: _____
- D. Type of Bonds
1. ☐ Government Use
 2. ☐ Private Activity
- E. Amount of Qualified Energy Conservation Bond to be used: \$ _____

(2) PROJECT INFORMATION

- A. General Description of the Project or Purpose, as applicable:

- B. Location of Project or Purpose (City or Town and County): _____

- C. Name, address, phone number, and tax ID number of the proposed issuer and, if private activity, private borrower or developer, as applicable (use separate sheet if needed).

- D. What public benefit or purpose would be accomplished by this project?

E. What are the energy conservation benefits of the project to the particular community, the county or the state?

F. Describe the extent to which this project will result in energy savings and the criteria you used to estimate the savings.

G. What is the project's expected life?

H. What is the project's budget? How much has been spent to date?

(3) ATTACHMENTS -THIS PROJECT VERIFICATION REPORT IS NOT COMPLETE UNLESS ORIGINALS OR CERTIFIED COPIES OF ALL ATTACHMENTS ARE INCLUDED HEREWITH.

- A. Inducement resolution, reimbursement resolution or other documentation of the preliminary approval of the project by the issuing entity, in conformity with applicable federal and state law.
- B. If the issuer is different from the county or large municipality that received the allocation, approval of the use of the allocation for the project or purpose by the governing body.
- C. A written Opinion of Legal Counsel stating that the proposed project meets QECB eligibility requirements under all applicable laws, rules, regulations and requirements. Such opinion must also confirm whether the proposed use is eligible to be considered a public or private use under QECB regulations and does not exceed the 30% limit on private activity bonds.

(4) Note: If the county or large municipality seeks additional Qualified Energy Conservation Bond allocation from the Energy Bond Allocation Committee for this Project, please complete a Request for Allocation (also available at www.adeca.alabama.gov/energy) indicating the additional allocation requested and include that with your submission.

- b. The undersigned, on behalf of the large local government set forth below, hereby certifies that he or she is authorized by such governmental unit to make the statements contained herein on behalf of such governmental unit.

c. Name of Unit: _____

By: _____
Signature of Authorized Official

Name (please print): _____

Title: _____

Address: _____

Phone Number of Authorized Official: _____

Date: _____

PROCEDURES AND CRITERIA FOR ALLOCATION OF QUALIFIED ENERGY CONSERVATION BONDS

The Energy Bond Allocation Committee (the "Committee") is directed to allocate Qualified Energy Conservation Bond ("QECB") capacity to eligible issuers of such bonds as follows:

- (1) To "large local governments," as such term is used in 26 U.S.C.S. § 54D(e)(2) in such amounts and manner as specifically directed by the United States Internal Revenue Service ("IRS") in 26 U.S.C.S. § 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented. For purposes of calculating the populations of local governments to determine which constitutes a "large local government," the Committee shall use population estimates as of July 1, 2007, as directed by the IRS.
- (2) To "Indian tribal governments," as such term is used in 26 U.S.C.S. § 54D (h) in such amounts as may be specifically directed by the IRS in 26 U.S.C.S. § 54D and relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented.
- (3) Following the allocations described in Items (1) and (2) of this Rule, the Committee shall allocate the remaining QECB capacity to eligible issuers. Such allocation shall be made by the Committee in its sole discretion, upon completed application by an eligible issuer, and after consideration of any factor the Committee deems relevant in its good faith and discretion, including (without limitation) some or all of the following factors:
 - a. The ability of the State to ensure that at least 70 percent of the State's allocation is used for government projects, and no more than 30 percent for projects considered QECB private activity bonds under IRS rules, regulations and guidelines;
 - b. The extent to which the project constitutes an eligible conservation purpose under 26 U.S.C.S. § 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented;
 - c. The extent to which the project demonstrates the potential to directly conserve energy;
 - d. The extent to which the project supports the development or implementation of innovative energy conservation technology;
 - e. The extent to which the project uses renewable resources to produce energy;
 - f. The number of citizens benefiting from the project;
 - g. The estimated number of jobs to be produced by the projects (for private activity allocations) and the amount of QECB authority per job produced;
 - h. The readiness of the project to proceed;
 - i. The certainty of the issuer using the allocation within the estimated timelines;
 - j. The amount of other public and private funding leveraged by the QECB allocation;
 - k. The amount of local community support for the project;
 - l. The best interests of the State of Alabama with regard to economic development, energy conservation, green initiatives and the general prosperity of the State;
 - m. Whether the unit of local government is in competition with another state for project benefits such as jobs and tax base;
 - n. Whether the availability of the allocation is a crucial part of attracting a new company or keeping an existing company in place;
 - o. Whether the requested allocation will benefit a project for which an eligible issuer is already issuing QECBs;
 - p. The ability of the unit of local government or company benefiting from the QECB to obtain financing and close the issue in a timely manner, including demonstration of a commitment from a bank or other financial institution to purchase or underwrite the QECBs;
 - q. The total amount of capacity available to the Committee for allocation.
- (4) Where required by law, local governments shall coordinate issuance of QECBs with and through the

Alabama Department of Finance and the Office of the Alabama State Treasurer, and shall obtain approval from the Alabama Department of Finance for QECB issuance.

- (5) Entities allocated QECB capacity by the Committee and/or entities who issue QECBs shall ensure compliance with all federal and state laws, rules, regulations and requirements applicable to such allocation or issue.
- (6) Entities receiving an allocation under Items (1) and (2) of this Rule (“large local governments” and “Indian tribal governments”) have the right to waive and/or reallocate to the State of Alabama all or a portion of their allocation. Upon the State’s receipt of any additional QECB capacity through any such waiver or reallocation, the Committee shall allocate such capacity to eligible issuers in the manner described in Item (3) of this Rule.
- (7) The Committee shall attach such contingencies upon any allocation of QECB capacity made under Item (3) of this Rule as the Committee may deem appropriate, including (without limitation) contingencies relating to a time deadline for issuance of the QECBs pursuant to the allocated capacity and contingencies limiting the use of the allocated QECB capacity for public or private activity bonds.

QUALIFIED ENERGY CONSERVATION BOND (QECB) REQUEST FOR ALLOCATION

Attn: Energy Bond Allocation Committee
c/o Kathy Hornsby
Energy Division
Alabama Department of Economic & Community Affairs
334-242-5284
kathy.hornsby@adeca.alabama.gov

Hand/Overnight Delivery
401 Adams Avenue
Suite 560
Montgomery, Alabama 36104

US Mail
Post Office Box 5690
Montgomery, Alabama 36103-5690

1. Name of governmental entity requesting allocation: _____ (the "Unit")
2. This project is:
 - a. ☐ A government project
 - b. ☐ A private activity
 - c. Amount of QECB allocation requested: \$ _____
3. Detailed Description of the project to be financed with Qualified Energy Conservation Bonds, as applicable (the "Project"):

4. Under which "qualified conservation purpose" described in 26 USCS § 54D and IRS Notice 2009-29 does the Project qualify? (NOTE: Pursuant to 26 USCS § 54D (f) (2), only capital expenditures are eligible qualified conservation purposes for private activity bonds.)

5. Location of Project (City or Town and County):

6. Name, address, phone number, and tax ID number of the proposed issuer and, if for the purpose of private activity, private borrower or developer, as applicable.

7. Name, address, phone number and email address of the bond counsel who is representing the borrower.

8. What public benefit or purpose would be accomplished by this project?

9. What are the energy conservation benefits of the project to the particular community, the county or the state?

10. Describe the extent to which this project will result in energy savings and the criteria you used to estimate the savings.

11. What is the project's expected life?

12. What is the project's budget? How much has been spent to date?

13. If the Unit does not receive a QECB allocation, what is the likelihood of this project being done?

14. In addition, the Unit is invited to provide additional information for consideration by the Energy Bond Allocation Committee (the "Committee") pursuant to any applicable guidelines or rules as it deems appropriate in order to support a finding by the Committee that the proposed project meets some or all of the factors to be considered by the Committee in reallocating Qualified Energy Conservation Bond allocation. The factors the Committee may currently consider include some or all of the following:

- (a) The ability of the State to ensure that at least 70 percent of the State's allocation is used for government projects, and no more than 30 percent for projects considered QECB private activity bonds under IRS rules, regulations and guidelines;
- (b) The extent to which the project constitutes an eligible conservation purpose under 26 U.S.C.S. § 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented;
- (c) The extent to which the project demonstrates the potential to directly conserve energy;
- (d) The extent to which the project supports the development or implementation of innovative energy conservation technology;
- (e) The extent to which the project uses renewable resources to produce energy;
- (f) The number of citizens benefiting from the project;
- (g) The estimated number of jobs to be produced by the projects (for private activity allocations) and the amount of QECB authority per job produced;
- (h) The readiness of the project to proceed;
- (i) The certainty of the issuer using the allocation within the estimated timelines;
- (j) The amount of other public and private funding leveraged by the QECB allocation;
- (k) The amount of local community support for the project;
- (l) The best interests of the State of Alabama with regard to economic development, energy conservation, green initiatives and the general prosperity of the State;
- (m) Whether the unit of local government is in competition with another state for project benefits such as jobs and tax base;
- (n) Whether the availability of the allocation is a crucial part of attracting a new company or keeping an existing company in place;

- (o) Whether the requested allocation will benefit a project for which an eligible issuer is already issuing QECBs;
 - (p) The ability of the unit of local government or company benefiting from the QECB to obtain financing and close the issue in a timely manner, including demonstration of a commitment from a bank or other financial institution to purchase or underwrite the QECBs;
 - (q) The total amount of capacity available to the Committee for allocation.
15. The following resolutions or other supporting documents must be attached to this Request for Allocation. These actions of the governing body of the appropriate governmental entity or entities may be evidenced by one or more resolutions.
- A. Inducement resolution, reimbursement resolution or other documentation of the preliminary approval of the project by the issuing entity, in conformity with applicable federal and state law.
 - B. Resolution of the requesting governmental entity requesting the allocation authorizing the appropriate officer to file a Request for Reallocation.
 - C. A written Letter of Credit or Letter of Commitment for a qualified private placement
 - D. A written Opinion of Legal Counsel stating that the proposed project meets QECB eligibility requirements under all applicable laws, rules, regulations and requirements. Such opinion must also confirm whether the proposed use is eligible to be considered a public or private use under QECB regulations.**

[Signature Page to Follow]

Any award of QECB allocation to Unit shall not be construed as or relied upon as a statement or decision that any particular project in fact complies with applicable laws, rules, regulations and requirements. To the contrary, by executing this form, Unit hereby certifies (i) that the stated project is legally eligible to be funded by QECB's, and (ii) Unit will ensure compliance with all applicable laws, rules, regulations and requirements with respect to any QECB's issued and shall ensure any relevant reports are timely made. Additionally, Unit hereby releases and agrees to hold completely harmless the Energy Bond Allocation Committee, the Alabama Department of Finance, the Alabama State Treasurer, the Alabama Department of Economic & Community Affairs, the State of Alabama, and any employees of any of the foregoing, from any and all matters relating to any QECB capacity awarded or not awarded to Unit or QECB's issued or not issued.

The undersigned, on behalf of the Unit set forth below, hereby certifies that it is authorized by the Unit to make the request and certifications contained herein on behalf of the Unit.

Name of Unit:

By:

Signature of Authorized Official

Name (please print):

Title:

Address:

Phone Number of Authorized Official:

Date:

NOTE: A SEPARATE APPLICATION FOR ALLOCATION MUST BE FILED FOR EACH PROJECT FOR WHICH ALLOCATION IS REQUESTED